

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
2012 MAR 19 PM 3:22
Cheryl H. Hogue, Jr. PC

STATE OF GEORGIA

v.

STEPHEN MCDANIEL

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:
:
:
:

INDICTMENT: 11-CR-67684
(Murder)

[2]
MEMORANDUM OF LAW REGARDING CASE ASSIGNMENT:
MOTION TO DISREGARD THE STATE'S
"MOTION TO INQUIRE INTO ASSIGNMENT OF
DEATH PENALTY CASE"

Stephen McDaniel, through counsel, now files this *Memorandum of Law Regarding Case Assignment: Motion to Disregard the State's "Motion to Inquire into Assignment of Death Penalty Case."*¹ The defense contends (1) that the case assignment was done correctly and should not be disturbed, (2) that the State has filed a useless "motion to inquire" into a matter that was answered adequately in two detailed letters from Chief Judge S. Phillip Brown to District Attorney Gregory W. Winters in response to a letter the District Attorney wrote asking about this very matter, (3) that the *Motion to Inquire* is actually a thinly veiled and utterly deficient

¹ The bracketed numeral above the motion title indicates that this is the second document filed by the defense in this case, a practice adopted by defense counsel in death penalty cases in order to make it easier for all concerned to identify, organize, and locate the many motions that will be filed in this case.

motion to recuse, and (4) that the State erroneously purports in its motion that a hearing must be held in order to "hear any concerns the Defendant or his counsel may have" when no such concerns exist and, if they did, counsel for Mr. McDaniel would have raised them on their own without the assistance of the District Attorney.

How We Got Here

1.

On January 4, 2011, the judges of the Macon Judicial Circuit issued *Uniform Superior Court Rule 1.2(B) Order Regarding Rules of Assignment of Unified Appeal Cases and Case Assignment for the Superior Courts of the Macon Judicial Circuit*. [Order attached as Exhibit A.]

2.

On June 2, 2011, a death penalty case, *State v. Lillian Walker*, that had been assigned to then Chief Judge Martha C. Christian, was docketed in the Georgia Supreme Court on interlocutory appeal from Judge Christian's denial of the defendant's motion for acquittal based upon an alleged violation of the defendant's demand for speedy trial.

3.

On December 8, 2011, the District Attorney for the Macon Judicial Circuit, Gregory W. Winters, filed his Notice of State's Intent to Seek the Death Penalty in *State v. Stephen McDaniel*. [Notice of Intent to Seek Death Penalty attached as Exhibit B.]

4.

Then Chief Judge Christian, pursuant to the *Rule 1.2(B) Order*, assigned herself to preside over *State v. Stephen McDaniel*. [Order of assignment to be attached as Exhibit C as soon as it is located; it does not appear to be in the Clerk's file.]

5.

On December 31, 2011, Chief Judge Christian retired, thereby vacating her office and necessitating immediate reassignment of any active death penalty cases over which she was presiding. The only active death penalty case over which she was presiding was *State v. Stephen McDaniel*.²

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² Here is the heart of the matter: Judge Christian had earlier been assigned to *State v. Lillian Walker*, but on June 2, 2011, that case was docketed in the Georgia Supreme Court on interim appeal. If the District Attorney's "inquiry" is to be taken at face value, and not as a thinly veiled motion to recuse or, worse, surreptitious judge-shopping, then the District Attorney wonders whether Chief Judge Brown should have assigned *Walker* to himself, rather than *McDaniel*. In what follows below, it should become clear that

6.

On January 4, 2012, Chief Judge S. Phillip Brown assigned *State v. Stephen McDaniel*, Indictment 11-CR-67684, to himself. [Order attached as Exhibit D.]

7.

Sixteen days later, on January 20, 2012, District Attorney Gregory W. Winters wrote to Chief Judge S. Phillip Brown and asserted his belief that "the manner in which the judicial assignment of the capital case was made needs to be addressed." [Letter attached as Exhibit E.]

8.

Three days later, on January 23, 2012, Chief Judge Brown responded to the District Attorney's letter by explaining how he had arrived at the conclusion that the assignment of this death penalty case to him was proper. [Letter attached as Exhibit F.]

9.

Two days after that, on January 25, 2012, Chief Judge Brown sent another letter to the District Attorney, explaining again and in further

Judge Brown, as he explained in two letters to the District Attorney, correctly passed over *Walker* because it does not meet the definition of an "active case" and because the trial court has no jurisdiction over it and, thus, correctly assigned *McDaniel* to himself in accordance with the random assignment system in the *Rule 1.2(B) Order*.

detail how he had arrived at the conclusion that this case should have been assigned to him. [Letter attached as Exhibit G.]

10.

The next day, January 26, 2012, the District Attorney filed a *"Motion to Inquire Into Assignment of Death Penalty Case."* [Motion attached as Exhibit H.]

11.

On February 6, 2012, Chief Judge Brown wrote a letter to District Court Administrator Joseph D. Baden to request that he appoint a chief judge from another circuit to hear the District Attorney's *Motion to Inquire*. [Letter attached as Exhibit I.]

12.

On March 6, 2012, Chief Judge of the Houston Judicial Circuit, George F. Nunn, Jr., designated the Honorable Ronnie Joe Lane, Superior Court judge in the Pataula Judicial Circuit, to preside over the State's *Motion to Inquire*. [Order attached as Exhibit J.]

13.

A hearing has been set for Friday, March 23, 2012, 9:30 a.m., Bibb County Superior Court.

14.

By email dated March 16, 2012, Judge Lane invited counsel to provide him with law related to this matter so that he could be better prepared for the hearing on March 23, 2012.

15.

This *Memorandum of Law*, therefore, is designed to assist the Court by framing the issues and citing the relevant law.

Issues, Law, and Argument: Why This Court Should Disregard the State's 'Motion to Inquire'

1. Chief Judge S. Phillip Brown Assigned this Case Correctly

In two letters in response to the State's inquiry (Exhibits F and G), and in his request to the District Court Administrator for another judge to review this issue (Exhibit I), Chief Judge Brown traced the route he took to arrive at the assignment of this case to himself. His application of the *Rule 1.2(B) Order* of the Macon Judicial Circuit and his logic are both unassailable. In sum, it goes like this:

A. Applicable Assignment Rules

- The rotation order for assignment of death penalty cases begins with the most senior judge and descends thereafter based upon seniority at the time the State announces its intent to seek the death penalty in a given case.
- If all judges have an active death penalty case, then the assignment of a new case will fall to the most senior judge in rotation with the least number of active death penalty cases.
- If the judge in line to receive an assignment of a new death penalty case has a conflict and cannot accept the case, then it goes to the next judge in sequence with the least amount of active death penalty cases.
- An "active case" is defined as a "Unified Appeal case pending before the trial court at the time of announcement from the State."³

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³ It follows by definition and law, therefore, as will be set forth more fully below, that a case that is on appeal is not an active case, since it is not "pending before the trial court at the time of announcement from the State" in the next and newest death penalty case now needing to be assigned or reassigned.

- Any active death penalty case assigned to a judge who vacates his or her office will be reassigned according to the random assignment system set out in the *Rule 1.2(B) Order*.

B. Application of the Assignment Rules to This Case

- The judges sitting in this circuit at the time of the State's announcement of its intent to seek the death penalty in *State v. Stephen McDaniel* were, in order of seniority:
 - Martha C. Christian, Chief Judge
 - S. Phillip Brown
 - Tilman E. Self III
 - Edgar W. Ennis
 - Howard Z. Simms
- When the State announced its intent to seek the death penalty against Stephen McDaniel, Judge Christian was the next judge in sequence with the least amount of active death penalty cases, so she received it.
- Judge Christian had earlier been assigned to *State v. Lillian Walker*, but that case was not "active," as defined by the *Rule 1.2(B) Order*, because jurisdiction in the trial court had been

divested as a result of an appeal to the Georgia Supreme Court that had been docketed on June 2, 2011.

- The active cases at the time of Judge Christian's retirement, therefore, were as follows:
 - Martha C. Christian: 1 case (*McDaniel*)
 - S. Phillip Brown: 1 case
 - Tilman E. Self III: 2 cases
 - Edgar W. Ennis: 1 case
 - Howard Z. Simms: 2 cases⁴
- Martha C. Christian vacated her office effective January 1, 2012.
- The *Rule 1.2(B) Order* required the new Chief Judge, S. Phillip Brown, to reassign "[a]ny Unified Appeal case pending" that had belonged to Judge Christian.
- The only active case that belonged to Judge Christian was *McDaniel*.

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⁴ Defense counsel does not know the names of these pending cases or their status, but relies upon the letters Judge Brown wrote in response to Mr. Winters, where Judge Brown listed how many active cases each judge had when *McDaniel* needed to be reassigned.

- The last judge to have received an assignment of a death penalty case before the State's announcement in *McDaniel* was Judge Simms.
- The next judge in rotation after Judge Simms was Judge Brown.
- Judge Brown, therefore, assigned *McDaniel* to himself.

C. Why *State v. Lillian Walker* Need Not Be Reassigned Before *State v. Stephen McDaniel*

When Judge Brown assigned *McDaniel* to himself, another death penalty case, *State v. Lillian Walker*, older than *McDaniel*, was, and still is, on appeal regarding an issue that could dispose of that case altogether (whether the defendant's demand for speedy trial had run and the defendant should be acquitted). It had been docketed in the Georgia Supreme Court on June 2, 2011, leaving Judge Christian with no active death penalty cases when the State served its Notice of Intent to Seek the Death Penalty against Stephen McDaniel. Judge Brown, therefore, did not see the need to reassign *Walker*, since it does not meet the *Rule 1.2(B) Order* definition of "active case."

In addition, Judge Brown reasoned that had he assigned *Walker* to himself while it was not active, then he still would have had only one active case. The next judge in sequence was Judge Self, who already had two active cases, thus, *McDaniel* would have given him three active cases. Had he assigned *Walker* to himself and then applied the random assignment system of the *Rule 1.2(B) Order*, he would have descended next to Judge Ennis, who had one active case. But Judge Ennis had indicated his intention to recuse himself from *McDaniel* because Mr. *McDaniel* had worked for him as a law clerk. Thus, he would next have moved to Judge Simms, but Judge Simms already had two active death penalty cases to Judge Brown's one. So, the rotation would have taken itself back to Judge Brown anyway.

Finally, in further deciding that *Walker* was not an active case—in addition to the definition of “active case” in the *Rule 1.2(B) Order*—Judge Brown concluded that *Chambers v. State*, 262 Ga. 200, 200-201 (1992) and O.C.G.A. § 5-6-34(b) divested the trial court of any jurisdictional authority by which any order could have been made regarding *Walker*, including an assignment order. In *Chambers*, the Georgia Supreme Court held as follows:

We granted a writ of certiorari to the Court of Appeals to determine whether a trial court has jurisdiction to take *any action* in a case prior to receiving the remittitur from the appellate court. We hold that a trial court does not⁵

Since a remittitur from the appellate court has not been issued in *Walker*, then the trial court has no jurisdiction to take *any action* in *Walker*, including assignment of the case. Thus, *McDaniel* is the first case requiring reassignment after Judge Christian's retirement.

2. The "Motion to Inquire" is Useless Because It's Been Answered and It's Too Vague to Discern a Specific Problem that the State Thinks Needs to Be Addressed

District Attorney Gregory W. Winters raised this issue in a letter to Judge Brown on January 20, 2012. [Exhibit E] In that letter, Mr. Winters wrote:

Additionally, the State believes that the manner in which the judicial assignment of the capital case needs to be addressed. The State is concerned that given the way other current death penalty cases have been assigned that it is possible that an error, actual or perceived, has occurred. This is something we certainly wish to clarify earlier rather than later.

This vague allusion to possible error, "actual or perceived," prompted two lengthy response letters from Judge Brown. [Exhibits F

⁵ *Chambers* at 200 (emphasis added).

and G] Apparently dissatisfied with explanations he was not owed anyway, the next day Mr. Winters filed his *Motion to Inquire Into Assignment of Death Penalty Case*. [Exhibit H] Still vague, the motion suggests that the District Attorney reviewed “applicable case law” — but cited none — and that he reviewed the *Rule 1.2(B) Order* — but pointed to no specific provision of that Order that he claims Judge Brown violated. The best we get from the motion is that the “State has concerns that the order for assignment of cases has not been properly followed.” No specific concerns can be found in the motion. A motion so bereft of any specific issue that purportedly constitutes error, along with supporting law and argument, should be disregarded.

3. The Motion Appears to be a Thinly Veiled Motion to Recuse and, as such, Utterly Fails to Comply with Uniform Superior Court Rule 25

Judge Brown issued the Order assigning the *McDaniel* case to himself on January 4, 2012. [Exhibit D] In that Order, Judge Brown explained why he passed over the reassignment of *Walker* by stating: “The State vs. Lillian Walker is on appeal to the Georgia Supreme Court. The appeal operates as a stay on trial court orders. The Walker case will

be assigned when the appeal is final." The District Attorney did not express any "concerns" about this Order until sixteen days later in a letter, on January 20, 2012, and even then his concerns were vague and hardly amounted to a motion to recuse Judge Brown. The motion he filed six days later still did not amount to a clear and direct motion to recuse, though that seems to be the intended desire. The motion, therefore, appears to be a thinly veiled motion to recuse, as if the District Attorney can only bring himself to hum the tune he dare not sing.

If Mr. Winters's "concern" is that Judge Brown has improperly assigned the *McDaniel* case to himself and that it should be reassigned to a different judge, then he should have said so by filing a motion to recuse and by complying with Uniform Superior Court Rule 25. The defense can see no other reason for the inquiry than to seek to recuse the assigned judge. That recusal rule requires that any motion to recuse or disqualify a judge "shall be timely filed in writing and all evidence thereon shall be presented by accompanying affidavit(s) which shall fully assert the facts upon which the motion is founded." USCR 25.1. Further, "filing and presentation to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for

disqualification . . . unless good cause be shown for failure to meet such time requirements.” Id. Since Mr. Winters failed to file a motion to recuse, failed to present a single affidavit in support of the motion he did file, failed to fully assert the facts upon which the motion is founded, and failed to file the motion, by whatever name, within five days of Judge Brown’s Order, then the *Motion to Inquire* — a thinly veiled motion to recuse — utterly fails on every level to have complied with the rules concerning the recusal or disqualification of a judge presiding over a case. Thus, it should be disregarded.

4. The State Need Not Concern Itself with Raising Issues on Behalf of a Person He Seeks to Have Killed; the Defendant Has Two Experienced Lawyers Who Can Take Care of His Legal Needs Without Any Help from the District Attorney

In justifying the *Motion to Inquire*, the District Attorney concluded it by writing: “Wherefore, the State respectfully requests this Court to schedule a hearing to address this issue and to hear any concerns the Defendant or his counsel may have.” [Exhibit H] The defendant and his counsel never raised any concerns about the assignment of this case, to the District Attorney or to the Court. The District Attorney represents

the State. In that capacity, he has made the decision to seek the defendant's death by lethal injection. Neither the defendant nor his lawyers need the prompting of the District Attorney to request that this Court "hear any concerns the Defendant or his counsel may have." The primary concern of the defense lawyers is to prevent the District Attorney from fulfilling his desire to have Stephen McDaniel killed by lethal injection. Their efforts will be focused on that goal. No issue will go unnoticed by defense counsel; every issue will be fully litigated. Mr. McDaniel will receive all the legal assistance guaranteed to him by the Sixth Amendment to the United States Constitution. The State's motion, therefore, should be disregarded.

Conclusion

For all these reasons, Stephen McDaniel, through his lawyers, asks the Court to disregard the State's *Motion to Inquire* by informing the District Attorney that Judge Brown answered his questions about case assignment completely and correctly in two detailed letters, that if the District Attorney had wanted to move this Court to recuse or disqualify Judge Brown then he should have said so directly and in compliance

with Uniform Superior Court Rule 25, which it is now too late to do anyway, and that if defense counsel has "concerns" about the application of the case assignment rules in this circuit, or any other legal issues in this case, then such concerns are upon them to raise in the proper way at the proper time.

March 19, 2012.

Floyd Buford (by ^{RL} *wt permission*)

FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805

Franklin J. Hogue

FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing **Memorandum of Law Regarding Case Assignment** upon the office of the District Attorney for the Macon Judicial Circuit by delivering it to:

Gregory W. Winters
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

March 19, 2012.

Franklin J. Hogue
FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
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misc # 131

Vicki Autley

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2011 JAN -4 PM 3:23

DIANNE BARNES, CLERK
SUPERIOR COURT OF
BIBB COUNTY, GEORGIAUNIFORM SUPERIOR COURT RULE 1.2(B) ORDER REGARDING RULES OF
ASSIGNMENT OF UNIFIED APPEAL CASES AND CASE ASSIGNMENT FOR THE
SUPERIOR COURTS OF THE MACON JUDICIAL CIRCUIT

Under the authority granted in Uniform Superior Court Rules (U.S.C.R.) #.1 for the "assignment of cases and actions" and U.S.C.R. 1.2 (B) for "Standing Orders" the following Rules regarding assignment of Unified Appeal cases is hereby promulgated by a majority of the Judges of Circuit, effective January 1, 2011, for the Superior Courts of the Macon Judicial Circuit. The Rules are specifically inclusive of and subject to the Uniform Superior Court Rules adopted by the Supreme Court of Georgia and effective July 1, 1985, as amended. These Rules set forth the well-established practices of the Court relating to case management, administration, and the operation of the Court and govern the programs which relate to case management, administration, and operation of the Court. These Rules also include an articulation of the particular procedure followed by the Court pertaining to the assignment of Unified Appeal cases pursuant to U.S.C.R. 3.1, which was adopted unanimously by all the Judges of the Circuit.

1. For identification and operational purposes, there are designated the following divisions of the Macon Judicial Circuit:
 - a) One-half Bibb Civil Jury Proceedings;

- b) One-half Bibb Civil Jury Proceedings;
- c) Bibb Domestic Relations Jury Proceedings;
- d) Bibb Major Criminal Jury Proceedings;
- e) Bibb Drug Court and Criminal Drug Case Jury Proceedings;
- f) Bibb Criminal Accusations Jury Proceedings;
- g) Peach Civil Jury Proceedings;
- h) Peach Criminal Jury Proceedings;
- i) Crawford Civil Jury Proceedings;
- j) Crawford Criminal Jury Proceedings;
- k) Habeas Corpus Proceedings.

Bibb County Civil Jury Proceedings shall be assigned by the Clerk of the Superior Court of Bibb County on a random basis by computer program so as to assign cases on a 50/50 basis annually to the Judges designated under subparagraphs a and b above.

Judges of each division shall be assigned on an annual basis by the Chief Judge after consultation with the other Judges of the Macon Judicial Circuit

2. Presiding Judge:

The presiding judge for Bibb County will be set by an annual calendar promulgated by the Chief Judge. The presiding judge for Peach and Crawford will be the judge designated for Civil Jury Proceedings in each county respectively.

3. Assignment of Unified Appeal Cases

Upon filing of the State's Notice of Intent to Seek the Death Penalty, and regardless of the judge to which the case is assigned at the time of the Notice, and

regardless of the county in which the death penalty is being sought, the Chief Judge of the Macon Judicial Circuit will make a judge assignment for the Unified Appeal case on a rotating basis, from among all active judges of the Macon Judicial Circuit. The rotation shall begin with the most senior judge and shall then rotate to the other active judges on the basis of seniority.

If the next judge in sequence has an active Unified Appeal case at the time of the assignment, the chief judge may assign the next judge in sequence. If all judges have an active Unified Appeal case, then the assignment will fall to the most senior judge with the least number of active Unified Appeal cases. The chief judge will discuss a pending assignment with the prospective case judge and in the absence of a conflict, the chief judge will enter a transfer/assignment order. If the prospective case judge has a basis for recusal or a conflict, the next judge in sequence will be eligible for the assignment.

In the event that a prospective judge cannot accept an assignment because of recusal or conflict, or in the event that judge is not assigned the case because he/she has an active case, that judge will receive a bye in the rotation and will be assigned the next Unified appeal case.

An active case shall be defined as a Unified Appeal case pending before the trial court at the time of the announcement from the State.

Any Unified Appeal case pending when a judge completes his/her term without being reelected, vacates office, or becomes disqualified or otherwise incapacitated, shall be immediately reassigned to another judge according to this random assignment system.

The foregoing Rules having been adopted by the undersigned Judges of the
Macon Judicial Circuit,

This 4th day of January, 2011.

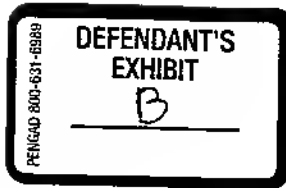

Martha C. Christian, Chief Judge

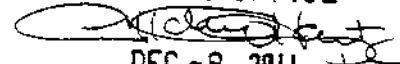

S. Phillip Brown, Judge


T. E. Self III, Judge


Edgar W. Ennis, Jr., Judge


Howard L. Simme, Judge



FILED
CLERK'S OFFICE

DEC -8 2011

GEORGIA, BIBB COUNTY
IN THE SUPERIOR COURT OF SAID COUNTY:

STATE OF GEORGIA : INDICTMENT #11CR67684
VS. : CHARGE: MURDER
STEPHEN MARK MCDANIEL, :
DEFENDANT. :

SUPERIOR COURT OF
BIBB COUNTY, GEORGIA

NOTICE OF INTENTION TO SEEK THE DEATH PENALTY

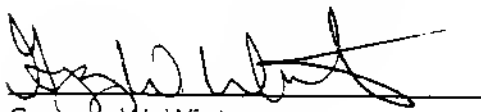
COMES NOW Gregory W. Winters, District Attorney, and Nancy Scott Malcor, Chief Assistant District Attorney in and for the Macon Judicial Circuit, and notify this Court that the State intends to seek the death penalty against the Defendant in the above-captioned case.

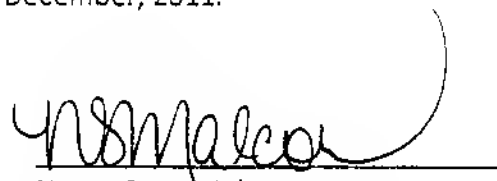
The State will rely on the following statutory aggravating circumstance under O.C.G.A. §17-10-30:

The offense of Murder in this case was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind. [O.C.G.A. §17-10-30(b)(7)]

The State respectfully requests this Court to schedule a hearing pursuant to the Unified Appeal proceedings under Georgia Law.

RESPECTFULLY SUBMITTED this 8th day of December, 2011.


Gregory W. Winters
District Attorney
Macon Judicial Circuit
Georgia Bar No. 771084


Nancy Scott Malcor
Chief Assistant District Attorney
Macon Judicial Circuit
Georgia Bar No. 46073

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

THE STATE OF GEORGIA,

CASE NO. 2011-CR-067684

vs.

STEPHEN MARK MCDANIEL,

Defendant

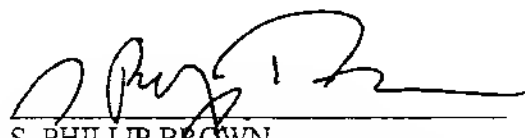
ORDER ON ASSIGNMENT OF DEATH PENALTY CASES

Under rules of this Judicial Circuit for assignment of cases in which the State has announced its intention to seek the death penalty, and on account of the rotation on prior cases assigned, and on account of Judge Edgar W. Ennis having recused to handle the State of Georgia vs. Stephen McDaniel case.

The case of State of Georgia vs. Stephen Mark McDaniel, is assigned to the undersigned Judge S. Phillip Brown for disposition.

The State vs. Lillian Walker, Peach County, Georgia is on appeal to the Georgia Supreme Court. The appeal operates as a stay on trial court orders. The Walker case will be assigned when the appeal is final.

So ordered this 4th day of January, 2012.



S. PHILLIP BROWN

Chief Judge, Superior Courts of Georgia
Macon Judicial Circuit

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2012 JAN -4 AM 9:36
Dianne Brannon, Clerk
SUPERIOR COURT OF
BIBB COUNTY GEORGIA



OFFICE OF THE DISTRICT ATTORNEY
Macon Judicial Circuit
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MACON, GA. 31201
(478) 621-6427 # Fax: 621-6601

Gregory W. Winters
DISTRICT ATTORNEY

Nancy Scott Malcor
CHIEF ASSISTANT DISTRICT ATTORNEY

ASSISTANT DISTRICT ATTORNEYS:
Kimberly S. Schwartz · Pamela White Colbert
Angela J. Manson · Elizabeth K. Bobbitt
Kirby H. Wincey · T. Clifton Woody, II
Sandra G. Matson · Myra H. Tisdale
Dorothy V. Hull · Sharell F. Lewis
John A. Regan · Jonathan L. Adams
Neil A. Halvorson · James J. Daniels II
John W. Geiger · Garrison A. Wood
Michael D. Smith · Ashley A. Cooper
Sara E. Roberts · Kimberlee M. Hillard
Brian R. Granger

January 20, 2012

Judge S. Phillip Brown
Chief Judge, Superior Courts of Georgia
Macon Judicial Circuit

Dear Judge Brown,

I have received notice that the First Proceeding hearing in the case of State of Georgia v. Stephen McDaniel, indictment number 11CR67684, has been scheduled for January 25, 2012 at 10:00 a.m. Other than the procedural issues that we are required to address, there are other legal matters that I believe need to be considered and heard by the Court as well.

Mr. McDaniel has another pending indictment, 11CR67685, charging him with thirty counts of sexual exploitation of children. We would like to set a schedule of dates and deadlines for this case as well so that we can begin providing discovery and preparing for a separate trial. The scheduling order initially generated for the child sexual exploitation case was issued when the case was still assigned to Senior Judge Tommy Day Wilcox.

Additionally, the State believes that the manner in which the judicial assignment of the capital case was made needs to be addressed. The State is concerned that given the way other current death penalty cases have been assigned that it is possible that an error, actual or perceived, has occurred. This is something that we certainly wish to clarify earlier rather than later.

Sincerely,

Gregory W. Winters
District Attorney
Macon Judicial Circuit

Cc: Floyd Buford, Jr.
Franklin J. Hogue



CHAMBERS OF THE SUPERIOR COURTS
 MACON JUDICIAL CIRCUIT
 601 MULBERRY STREET
 SUITE 310
 MACON, GEORGIA 31201

S. PHILLIP BROWN
 CHIEF JUDGE

(478) 621-6328
 Fax (478) 621-6580

January 23, 2012

Mr. Gregory W. Winters
 Ms. Nancy Scott Malcor
 Office of the District Attorney
 Macon, GA 31201

RE: State of Georgia v. Stephen Mark McDaniel, 11-CR-67684

Dear Counsel:

Thank you for your recent letter which I received earlier today. For the information of all counsel, I spent an inordinate amount of time considering the assignment issue, and I would be happy to share the results of my legal research with counsel upon request. Both my law clerk and I did considerable legal research regarding several issues including:

- (a) whether the pending appeal in *Walker* affects my ability to assign that case;
- (b) whether Judge Self would be the appropriate person to assign to this case since he signed search warrants only after hearing evidence from officers that permitted him to conclude that there was probable cause to suspect that the officers would find evidence; and
- (c) whether probable cause constitutes an extra judicial finding on Judge Self's part when there was no case pending.

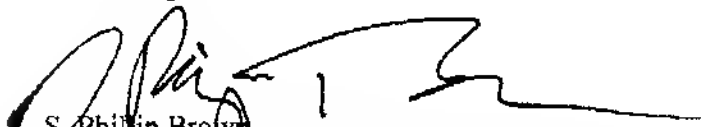
The United States Supreme Court consistently has stated that "[t]rial before 'an unbiased judge' is essential to due process." *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971), citing *Bloom v. Illinois*, 391 U.S. 194, 205 (1968) and *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971). One does not have to make up his mind in order to be biased. Rather, bias means, among other things, an inclination or bent. Having found probable cause that searching defendant's residence would result in finding evidence of a crime would seem to imply that the judge finding probable cause had an inclination or bent regarding defendant's involvement in the crimes later charged. Indeed, Black's Law Dictionary (9th Ed) defines the term "probable cause" as meaning in relevant part, "[a] reasonable ground to suspect that a person has committed or is committing a crime or that

a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued.” As result, I continue to question whether any judge can say that he is entirely unbiased after finding probable cause sufficient to sign various warrants, unless the judge learned whatever he learned during the pendency of case and his handling of it. Additionally, since no case existed when the warrants were handed down here, I do not see how the results of Judge Self’s findings were not extra judicial.

In considering the assignment issue, I also consulted a respected federal judge about the issues inherent in a judge presiding over a death penalty case after he had found probable cause for the issuance of various warrants before the defendant’s indictment. Additionally, I know of at least one state court judge who did not sign warrants for cases he had to later try. I assume that this state court judge did so to avoid exactly these sorts of issues involving bias.

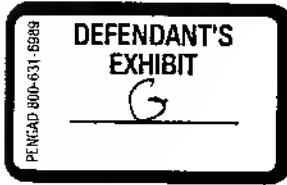
Although I have not yet found any clear answers to the complicated issues outlined in this letter, I remain convinced that what I did with regard to the assignment of this case is correct under the existing law as I understand it. Nevertheless, I think it is appropriate to leave it to counsel to file any objections they deem fit. We can schedule a hearing to address any such objections. I normally would ask for a phone conference, but I do not think that doing so is appropriate in a death penalty case.

Warm Regards:



S. Philip Brown
Chief Judge, Superior Courts of Georgia
Macon Judicial Circuit

cc: Floyd M. Buford, Jr.
Franklin J. Hogue



CHAMBERS OF THE SUPERIOR COURTS
 MACON JUDICIAL CIRCUIT
 601 MULBERRY STREET
 SUITE 310
 MACON, GEORGIA 31201

S. PHILLIP BROWN
 CHIEF JUDGE

(478) 621-6328
 Fax (478) 621-6580

January 25, 2012

Greg Winters, Esq.
 District Attorney
 661 Mulberry Street
 Macon, GA 31201

RE: State of Georgia vs. Stephen Mark McDaniel

Dear Greg:

Regarding the assignment issue on McDaniel, I hope I gave enough of an explanation with my mail of Monday. The logic and research behind my assignment was actually quite a bit more complex. Some highlights here. I see no reason to put all logic down. I am not even sure I would recall all the rationale at any one sitting.

I actually spent an entire weekend dealing with this issue. I ran every possibility of assignment through my mind numerous times, in order to investigate possibilities. It dawned on me this morning that you may have had some other reason than the one I explained Monday for your thoughts. Let me add this to the rationale used.

I want to keep this short. I avoided some of the reasons because the entire logical stream is not short

Here is an important addition to what I previously wrote. I assumed when I wrote that what I wrote would be sufficient. It may not have been.

Under the rule we are to bypass (give a bye to) a judge for assignment if they already have more cases than others later in the assignment rotation.

The rotation order is from most senior judge to successive less senior, as of date of indictment. That rotation is therefore in this order: me, Judge Self, Judge Ennis then Judge Simms, and then back to me.

All judges already have two cases except Judge Ennis and me. That seems to have limited this assignment to either Judge Ennis or to me. I went to judge Ennis to see if he would be a possibility to assign the McDaniel case to. He informed me that he had recused (or would have to recuse, if he had not already recused) due to fact that the defendant had been his legal intern. That left me as the only judge with only one case that could take this assignment under the rules.

I followed the order of rotation around in circles and it always landed back on me. Judge Self had the problem of having repeatedly found probable cause for arrest and search after talking to (taking sworn testimony from) investigators and this when there was no case pending; Judge Ennis recused on account of knowing defendant; Judge Simms already had two cases and I had only one, so the rotation pointer came back to me.

If the defense has any objection we will hear them out. I want you to know enough of my logic to see what I did and why so.

I am at home writing. I assume that I explained not assigning the Peach County case to me before assigning McDaniel. Doing so would have the assignment pointer stop with Judge Simms. Yet research on that showed that I could not enter an order of assignment of the Walker case in Peach County due to the pendency of an appeal on an issue that will determine if a case is pending against Walker. I cannot assign a case (Walker) if it does not exist. The appeal will decide that issue.


A judge can enter an order in a case on appeal only if the order is not germane to the issue on appeal. For example they allow an order to issue on child support contempt despite the issue of a divorce being on appeal. Yet in Walker the very same issue on appeal is an innate aspect of any assignment, namely whether or not there is any case existing to be assigned.

Assigning the Walker case would effectively give a bye to one judge in rotation in contradiction to our assignment rule, if there is no pending case in Peach.

That would also put three cases on Judge Simms with me having only one. That too is contrary to our rule. The rule says we pass over a judge with more cases assigned than the judges further in rotation cycle. (i.e. pass over Simms who has two cases and get to me, with only one – so as to avoid Simms with three and me with one).

If you have a better idea, please share it. I just think you need to know my logical flow in reaching my decision.

Respectfully,



Phil Brown

Cc: Floyd Buford
Franklin J. Hogue

GEORGIA, BIBB COUNTY
IN THE SUPERIOR COURT OF SAID COUNTY:



FILED
CLERK'S OFFICE
Cheryl Masangala
JAN 26 2012

STATE OF GEORGIA

INDICTMENT #11CR67684

VS.

CHARGE: MURDER

STEPHEN MARK MCDANIEL,
DEFENDANT.

SUPERIOR COURT OF
BIBB COUNTY GEORGIA

MOTION TO INQUIRE INTO ASSIGNMENT OF DEATH PENALTY CASE

COMES NOW Gregory W. Winters, District Attorney, and Nancy Scott Malcor, Chief Assistant District Attorney in and for the Macon Judicial Circuit, and move this Court to inquire into method of assignment of the death penalty case to this Court and shows the following:

1.

The State received from this Court an Order on Assignment of Death Penalty Cases dated January 4, 2010.

2.

In that order this Court stated that the pending death penalty case State v. Lillian Walker, Indictment 09CR119, is on appeal and therefore the appeal "operates as a stay on trial court orders. The Walker case will be assigned when the appeal is final."

3.

After not assigning State v. Lillian Walker, this Court assigned State v. Stephen McDaniel, Indictment 11CR67684, to itself.

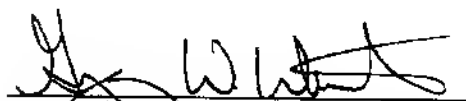
After reviewing applicable case law and this Court's Uniform Superior Court Rule 1.2(B) Order Regarding Rules of Assignment of Unified Appeal Cases and Case Assignment for the

CM

Superior Courts of the Macon Judicial Circuit, attached as Exhibit A, the State has concerns that the order for assignment of cases has not been properly followed.

Wherefore, the State respectfully requests this Court to schedule a hearing to address this issue and to hear any concerns the Defendant or his counsel may have.

RESPECTFULLY SUBMITTED this 26th day of January, 2012.



Gregory W. Winters

District Attorney

Macon Judicial Circuit

Georgia Bar No. 771084



Nancy Scott Malcor

Chief Assistant District Attorney

Macon Judicial Circuit

Georgia Bar No. 46073

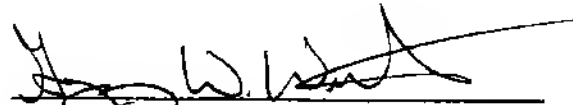
CERTIFICATE OF SERVICE

I, Gregory W. Winters, District Attorney in and for the Macon Judicial Circuit, do hereby certify that I have this day served a true and correct copy of the within and foregoing **MOTION TO INQUIRE INTO ASSIGNMENT OF DEATH PENALTY CASE** upon the Defendant's counsel by mailing the same to:

Floyd M. Buford, Jr.
136 College Street
P.O. Box 4747
Macon, Georgia 31208

Franklin J. Hogue
341 Third Street
P.O. Box 1795
Macon, Georgia 31202

This 26th day of January, 2012.



Gregory W. Winters
District Attorney
Macon Judicial Circuit
Georgia Bar No. 771084

EXHIBIT A

- b) One-half Bibb Civil Jury Proceedings;
- c) Bibb Domestic Relations Jury Proceedings;
- d) Bibb Major Criminal Jury Proceedings;
- e) Bibb Drug Court and Criminal Drug Case Jury Proceedings;
- f) Bibb Criminal Accusations Jury Proceedings;
- g) Peach Civil Jury Proceedings;
- h) Peach Criminal Jury Proceedings;
- i) Crawford Civil Jury Proceedings;
- j) Crawford Criminal Jury Proceedings;
- k) Habeas Corpus Proceedings.

Bibb County Civil Jury Proceedings shall be assigned by the Clerk of the Superior Court of Bibb County on a random basis by computer program so as to assign cases on a 50/50 basis annually to the Judges designated under subparagraphs a and b above.

Judges of each division shall be assigned on an annual basis by the Chief Judge after consultation with the other Judges of the Macon Judicial Circuit.

2. Presiding Judge:

The presiding judge for Bibb County will be set by an annual calendar promulgated by the Chief Judge. The presiding judge for Peach and Crawford will be the judge designated for Civil Jury Proceedings in each county respectively.

3. Assignment of Unified Appeal Cases

Upon filing of the State's Notice of Intent to Seek the Death Penalty, and regardless of the judge to which the case is assigned at the time of the Notice, and

regardless of the county in which the death penalty is being sought, the Chief Judge of the Macon Judicial Circuit will make a judge assignment for the Unified Appeal case on a rotating basis, from among all active judges of the Macon Judicial Circuit. The rotation shall begin with the most senior judge and shall then rotate to the other active judges on the basis of seniority.

If the next judge in sequence has an active Unified Appeal case at the time of the assignment, the chief judge may assign the next judge in sequence. If all judges have an active Unified Appeal case, then the assignment will fall to the most senior judge with the least number of active Unified Appeal cases. The chief judge will discuss a pending assignment with the prospective case judge and in the absence of a conflict, the chief judge will enter a transfer/assignment order. If the prospective case judge has a basis for recusal or a conflict, the next judge in sequence will be eligible for the assignment.

In the event that a prospective judge cannot accept an assignment because of recusal or conflict, or in the event that judge is not assigned the case because he/she has an active case, that judge will receive a bye in the rotation and will be assigned the next Unified appeal case.

An active case shall be defined as a Unified Appeal case pending before the trial court at the time of the announcement from the State.

Any Unified Appeal case pending when a judge completes his/her term without being reelected, vacates office, or becomes disqualified or otherwise incapacitated, shall be immediately reassigned to another judge according to this random assignment system.

The foregoing Rules having been adopted by the undersigned Judges of the
Macon Judicial Circuit,

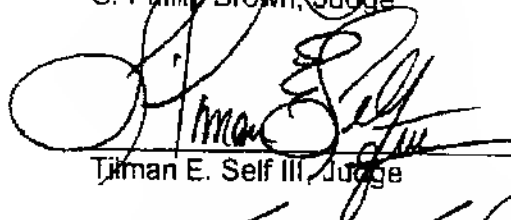
This 4th day of January, 2011.



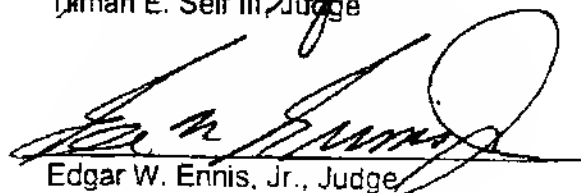
Martha C. Christian, Chief Judge



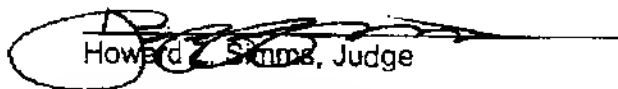
S. Phillip Brown, Judge



Tilman E. Self III, Judge



Edgar W. Ennis, Jr., Judge



Howard C. Simms, Judge



CHAMBERS OF THE SUPERIOR COURTS
MACON JUDICIAL CIRCUIT
601 MULBERRY STREET
SUITE 310
MACON, GEORGIA 31201

S. PHILLIP BROWN
CHIEF JUDGE

(478) 621-6328
Fax (478) 621-6580

February 6, 2012

Joseph D. Baden
District Court Administrator
124 Byrd Way, Suite 300
Warner Robins, GA 31095

RE: State of Georgia v. Stephen Mark McDaniel, 11-CR-67684, Bibb County
State of Georgia v. Lillian Walker, 09-CR-119, Peach County

Dear Mr. Baden:

I am writing you today because District Attorney Gregory Winters recently filed virtually identical "Motion[s] to Inquire into Assignment of Death Penalty Case[s]" in both of the above-referenced death penalty cases. I assigned McDaniel, which is a Bibb County case, to myself. However, I have not yet assigned Walker, which is a Peach County case, because there is an appeal pending before the Georgia Supreme Court. As I understand it, the Georgia Supreme Court is reviewing a potentially dispositive ruling in Walker made by Judge Christian. She denied defendant's motion for an acquittal.

After reviewing the "Motion to Inquire into Assignment of Death Penalty Case" in both McDaniel and Walker and after consulting with other local judges, I respectfully request that you to appoint a chief judge from another circuit to resolve both motions.

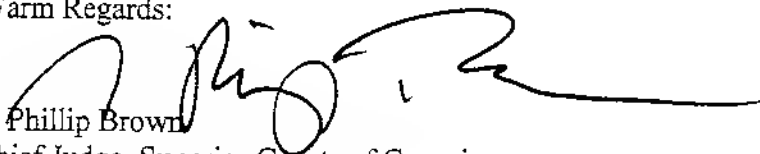
The relevant facts that a reviewing judge likely will need to know in order to analyze the assignment rules of the Macon Judicial Circuit as those rules apply here are set forth below:


1. On January 4, 2011, the judges of the Macon Judicial Circuit enacted a local standing order formalizing our longstanding internal practices for, among other things, the assignment of unified appeal or death penalty cases. For ease of reference, the January 4, 2011 local standing order is attached and labeled "Exhibit A."

2. As per the January 4, 2011 local standing order, once the State files its Notice of Intent to Seek the Death Penalty, the Chief Judge of the Macon Judicial Circuit is to assign a judge on a rotating basis among all active judges. The rotation order for the assignment of death penalty cases begins with the most senior judge and rotates thereafter based on judge seniority. The current rotation order and number of death penalty cases presently assigned to each active judge in the Macon Judicial Circuit is as follows:
 - a. S. Phillip Brown 2 active cases (including McDaniel)
 - b. Tilman E. Self 2 active cases (involving codefendants)
 - c. Edgar W. Ennis 1 active case
 - d. Howard Z. Simms 2 active cases (involving codefendants)
3. Judge Simms had the most recent assignment of a death penalty case. He was assigned two death penalty cases involving codefendants.
4. When Judge Christian retired effective January 1, 2012 and assumed senior judge status, she was handling the following two death penalty cases:
 - a. Walker, which is an older Peach County case currently on appeal, and
 - b. McDaniel, which is a more recent Bibb County case.
5. After Judge Christian retired, I became the Chief Judge of the Macon Judicial Circuit. It therefore is my responsibility as Chief Judge to assign both Walker and McDaniel, consistent with the existing law and the above-referenced local standing order.
6. Because Judge Simms received the most recent death penalty case assignment, I was the next judge for the assignment of a death penalty case in the current rotation order.
7. Walker is presently on appeal to the Georgia Supreme Court. For that reason, I did not assign any judge to Walker. Pending appeals stay orders per the law discussed *infra*. Instead, I assigned McDaniel, pursuant to an "Order on Assignment of Death Penalty Cases" filed in the Clerk's Office on January 4, 2012. For ease of reference, the January 4, 2012, "Order on Assignment of Death Penalty Cases" is attached and labeled "Exhibit B."
8. In assigning myself to McDaniel, I relied on:
 - a. My interpretation of the January 4, 2011 local standing order; and
 - b. Certain statutory and case law indicating that the pending appeal in Walker stays any order from the trial court. See Chambers v. State, 262 Ga. 200, 200-201 (1992); O.C.G.A. § 5-6-34(b).
9. For ease of reference, the District Attorney's January 26, 2012 "Motion to Inquire into Assignment of Death Penalty Case" in McDaniel is attached and labeled "Exhibit C."

Please do not hesitate to contact me with any questions or concerns. Thank you in advance for your assistance in this matter.

Warm Regards:


S. Phillip Brown
Chief Judge, Superior Courts of Georgia
Macon Judicial Circuit

cc: Floyd M. Buford, Jr.,  Franklin J. Hogue, Gregory W. Winters
TES, EWE, HZS, MCC, TDW
Clerk



misc # 131

Vicki Autley

FILED
CLERK'S OFFICE

2011 JAN -4 PM 3: 23

DIANNE B. BIRB
SUPERIOR COURT
BIBB COUNTY

UNIFORM SUPERIOR COURT RULE 1.2(B) ORDER REGARDING RULES OF
ASSIGNMENT OF UNIFIED APPEAL CASES AND CASE ASSIGNMENT FOR THE
SUPERIOR COURTS OF THE MACON JUDICIAL CIRCUIT

Under the authority granted in Uniform Superior Court Rules (U.S.C.R.) #.1 for the "assignment of cases and actions" and U.S.C.R. 1.2 (B) for "Standing Orders" the following Rules regarding assignment of Unified Appeal cases is hereby promulgated by a majority of the Judges of Circuit, effective January 1, 2011, for the Superior Courts of the Macon Judicial Circuit. The Rules are specifically inclusive of and subject to the Uniform Superior Court Rules adopted by the Supreme Court of Georgia and effective July 1, 1985, as amended. These Rules set forth the well-established practices of the Court relating to case management, administration, and the operation of the Court and govern the programs which relate to case management, administration, and operation of the Court. These Rules also include an articulation of the particular procedure followed by the Court pertaining to the assignment of Unified Appeal cases pursuant to U.S.C.R. 3.1, which was adopted unanimously by all the Judges of the Circuit.

1. For identification and operational purposes, there are designated the following divisions of the Macon Judicial Circuit:
 - a) One-half Bibb Civil Jury Proceedings;

- b) One-half Bibb Civil Jury Proceedings;
- c) Bibb Domestic Relations Jury Proceedings;
- d) Bibb Major Criminal Jury Proceedings;
- e) Bibb Drug Court and Criminal Drug Case Jury Proceedings;
- f) Bibb Criminal Accusations Jury Proceedings;
- g) Peach Civil Jury Proceedings;
- h) Peach Criminal Jury Proceedings;
- i) Crawford Civil Jury Proceedings;
- j) Crawford Criminal Jury Proceedings;
- k) Habeas Corpus Proceedings.

Bibb County Civil Jury Proceedings shall be assigned by the Clerk of the Superior Court of Bibb County on a random basis by computer program so as to assign cases on a 50/50 basis annually to the Judges designated under subparagraphs a and b above.

Judges of each division shall be assigned on an annual basis by the Chief Judge after consultation with the other Judges of the Macon Judicial Circuit.

2. Presiding Judge:

The presiding judge for Bibb County will be set by an annual calendar promulgated by the Chief Judge. The presiding judge for Peach and Crawford will be the judge designated for Civil Jury Proceedings in each county respectively.

3. Assignment of Unified Appeal Cases

Upon filing of the State's Notice of Intent to Seek the Death Penalty, and regardless of the judge to which the case is assigned at the time of the Notice, and

regardless of the county in which the death penalty is being sought, the Chief Judge of the Macon Judicial Circuit will make a judge assignment for the Unified Appeal case on a rotating basis, from among all active judges of the Macon Judicial Circuit. The rotation shall begin with the most senior judge and shall then rotate to the other active judges on the basis of seniority.

If the next judge in sequence has an active Unified Appeal case at the time of the assignment, the chief judge may assign the next judge in sequence. If all judges have an active Unified Appeal case, then the assignment will fall to the most senior judge with the least number of active Unified Appeal cases. The chief judge will discuss a pending assignment with the prospective case judge and in the absence of a conflict, the chief judge will enter a transfer/assignment order. If the prospective case judge has a basis for recusal or a conflict, the next judge in sequence will be eligible for the assignment.


In the event that a prospective judge cannot accept an assignment because of recusal or conflict, or in the event that judge is not assigned the case because he/she has an active case, that judge will receive a bye in the rotation and will be assigned the next Unified appeal case.

An active case shall be defined as a Unified Appeal case pending before the trial court at the time of the announcement from the State.

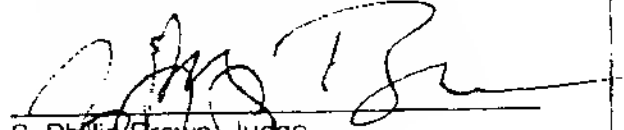
Any Unified Appeal case pending when a judge completes his/her term without being reelected, vacates office, or becomes disqualified or otherwise incapacitated, shall be immediately reassigned to another judge according to this random assignment system.

The foregoing Rules having been adopted by the undersigned Judges of the
Macon Judicial Circuit,

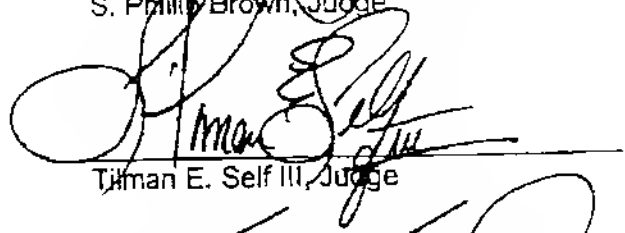
This 4th day of January, 2011.



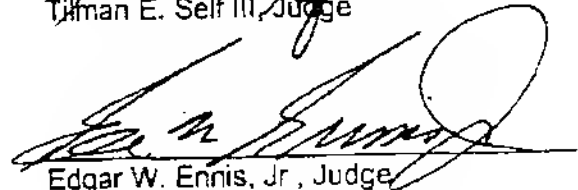
Martha C. Christian, Chief Judge



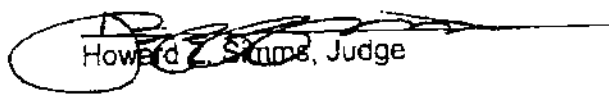
S. Phillip Brown, Judge



Tilman E. Self III, Judge



Edgar W. Ennis, Jr., Judge



Howard Z. Simms, Judge

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

THE STATE OF GEORGIA,

vs.

STEPHEN MARK MCDANIEL,

Defendant

CASE NO. 2011-CR-067684


ORDER ON ASSIGNMENT OF DEATH PENALTY CASES

Under rules of this Judicial Circuit for assignment of cases in which the State has announced its intention to seek the death penalty, and on account of the rotation on prior cases assigned, and on account of Judge Edgar W. Ennis having recused to handle the State of Georgia vs. Stephen McDaniel case.

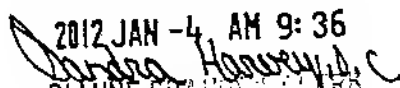
The case of State of Georgia vs. Stephen Mark McDaniel, is assigned to the undersigned Judge S. Phillip Brown for disposition.

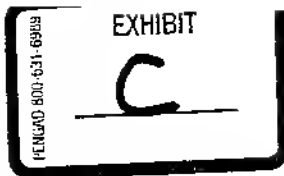
The State vs. Lillian Walker, Peach County, Georgia is on appeal to the Georgia Supreme Court. The appeal operates as a stay on trial court orders. The Walker case will be assigned when the appeal is final.

So ordered this 4th day of January, 2012.


S. PHILLIP BROWN
Chief Judge, Superior Courts of Georgia
Macon Judicial Circuit

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2012 JAN -4 AM 9:36

DIANNE BRANNON, CLERK
SUPERIOR COURT OF
BIBB COUNTY, GEORGIA



GEORGIA, BIBB COUNTY
IN THE SUPERIOR COURT OF SAID COUNTY:

CLERK'S OFFICE
Charles Massey
JAN 26 2012
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA	:	INDICTMENT #11CR67684
VS.	:	CHARGE: MURDER
STEPHEN MARK MCDANIEL,	:	
DEFENDANT.	:	

MOTION TO INQUIRE INTO ASSIGNMENT OF DEATH PENALTY CASE

COMES NOW Gregory W. Winters, District Attorney, and Nancy Scott Malcor, Chief Assistant District Attorney in and for the Macon Judicial Circuit, and move this Court to inquire into method of assignment of the death penalty case to this Court and shows the following:

1.

The State received from this Court an Order on Assignment of Death Penalty Cases dated January 4, 2010.

2.

In that order this Court stated that the pending death penalty case State v. Lillian Walker, Indictment 09CR119, is on appeal and therefore the appeal "operates as a stay on trial court orders. The Walker case will be assigned when the appeal is final."

3.

After not assigning State v. Lillian Walker, this Court assigned State v. Stephen McDaniel, Indictment 11CR67684, to itself.

After reviewing applicable case law and this Court's Uniform Superior Court Rule 1.2(B) Order Regarding Rules of Assignment of Unified Appeal Cases and Case Assignment for the

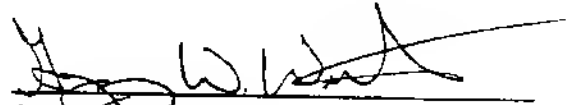
CERTIFICATE OF SERVICE

I, Gregory W. Winters, District Attorney in and for the Macon Judicial Circuit, do hereby certify that I have this day served a true and correct copy of the within and foregoing MOTION TO INQUIRE INTO ASSIGNMENT OF DEATH PENALTY CASE upon the Defendant's counsel by mailing the same to:

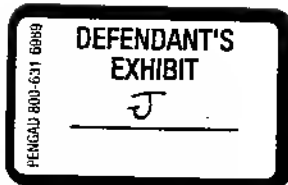
Floyd M. Buford, Jr.
136 College Street
P.O. Box 4747
Macon, Georgia 31208

Franklin J. Hogue
341 Third Street
P.O. Box 1795
Macon, Georgia 31202

This 26th day of January, 2012.



Gregory W. Winters
District Attorney
Macon Judicial Circuit
Georgia Bar No. 771084



IN THE SUPERIOR COURT OF BIBB COUNTY
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

STATE OF GEORGIA
Plaintiff

V

CRIMINAL ACTION FILE NO.
2011-CR-067684

STEPHEN MARK MCDANIEL
Defendant

MOTION OF INQUIRY

WHEREAS, the Honorable S. Phillip Brown, Chief Judge of the Macon Judicial Circuit has requested assistance pursuant to O.C.G.A. Section 15-1-9.1 and Uniform Superior Court Rule (USCR) 18.2 because the Macon Judicial Circuit is in need of the temporary assistance of a Judge from outside of the Macon Judicial Circuit to handle the Motion of Inquiry on the above mentioned case, pursuant to Rule 18 of the Uniform Rules of the Superior Courts of the State of Georgia.

THEREFORE, the Honorable S. Phillip Brown, Administrative Judge of the Third Judicial Administrative District would normally request the assistance of a Judge of the Superior Courts of Georgia, however, due to family medical leave; assistance is being requested by the Presiding Judge of the Third Judicial Administrative District, The Honorable George F. Nunn, Jr.

NOW THEREFORE, the Honorable George F. Nunn, Jr., Presiding Judge of the Third Judicial Administrative District has requested the assistance of the Honorable Ronnie Joe Lane, Superior Court Judge of the Pataula Judicial Circuit and the Honorable Lane has agreed to hear the Motion of Inquiry;

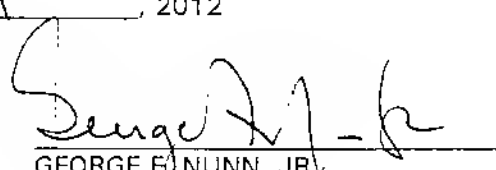
The Honorable Ronnie Joe Lane is hereby designated to serve as a Superior Court Judge in the Macon Judicial Circuit to hear the above mentioned Motion of Inquiry and any other business deemed necessary by the court, until the completion of the matter assigned to him; and he is fully clothed with all the same authority and powers exercised by a Superior Court Judge for the Macon Judicial Circuit.

This Order is entered pursuant to O.C.G.A. § 15-1-9.1 and 2 and USCR 18.2.

IT IS ORDERED that this Order be filed in the office and recorded on the Minutes of the Clerk of the Superior Court of Bibb County, Georgia.

AND IT IS ORDERED.

This 4 day of March, 2012


GEORGE F. NUNN, JR.
Presiding Judge

Cc: The Honorable Ronnie Joe Lane
Floyd M. Buford, Jr.
Franklin J. Hogue
Gregory W. Winters
Nancy Scott Malcor